

NOV 1 2006

Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	§	
	§	
High-Cost Universal Service	§	WC Docket No. 05-337
Support	§	
	§	
Federal-State Joint Board on	§	CC Docket No. 96-45
Universal Service	§	

Comments of the Public Utility Commission of Texas

The Public Utility Commission of Texas (Texas PUC), having regulatory authority over public utilities within our jurisdiction in Texas, respectfully submits these comments in response to the *Request for Comment* issued by the Federal-State Joint Board on Universal Service (Joint Board) in the above-captioned proceedings.¹

In its *Request for Comment*, the Joint Board requests comment on the use of reverse auctions (competitive bidding) to determine high cost universal service funding for eligible telecommunications carriers (ETCs) pursuant to section 254 of the Communications Act of 1934, as amended (the Act).² The Joint Board, among other things, asks that interested parties provide comment regarding whether and how competitive bidding could be utilized to further the goals of the Act and the Federal Communications Commission's (Commission) universal service goals. In particular, the Joint Board seeks comment on: what would be the appropriate roles of the Commission, the State commissions, and Universal Service Administrative Company (USAC) relative to the administration of the

¹ *In the Matter of Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337 and CC Docket No. 96-45, Request for Comments, FCC 06J-1 (rel. Aug. 25, 2006) (*Request for Comment*).

² 47 U.S.C. § 254(e).

auction process, oversight of the winning bidder(s), and the distribution of funds;³ how auctions could be designed to appropriately target support to areas in need of support;⁴ what should be the appropriate baseline for service quality for bids;⁵ whether there are an optimal number of winners or supported providers per area and what auction procedure would be used to accommodate multiple winners;⁶ and how auctions generally, or any proposals specifically, should treat current recipients of universal service funds in an area.⁷

Jurisdictional Roles

In the State of Texas, the Texas PUC designates common carriers as ETCs to receive support from the federal universal service fund (FUSF) pursuant to P.U.C. SUBST. R. 26.418, which was adopted to implement 47 U.S.C. § 214(e)(2). Pursuant to the Texas PUC's rule, numerous carriers have received ETC designation since 1997; as of September 15, 2006, 94 carriers were designated as ETCs in Texas.⁸ Since the role of the state in designating ETCs is specified by federal statute, the Texas PUC encourages the Joint Board and the Commission to consider the primary role of the State in this process.

Supported Areas

P.U.C. SUBST. R. 26.418(b) designates two classifications of service area in which ETCs can receive FUSF support: non-rural incumbent local exchange carrier (ILEC) service area and rural ILEC study area. P.U.C. SUBST. R. 26.418(b)(1) provides that "to be eligible to receive federal universal service

³ *Request for Comment* at ¶ 7.

⁴ *Id.* at ¶ 8.

⁵ *Id.* at ¶ 10.

⁶ *Id.* at ¶ 11.

⁷ *Id.* at ¶ 13.

⁸ Of those carriers with ETC designation, 62 are incumbent local exchange carriers (ILECs), 22 are competitive local exchange carriers (CLECs), and 10 are commercial mobile radio service (CMRS) providers.

support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations (C.F.R.) § 54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.” Generally, non-rural areas are specified on a wire center basis, implying that a carrier must provide service throughout each wire center for which it seeks designation. However, in the case of a commercial mobile radio service (CMRS) provider, the non-rural service area may be specified on the basis of the CMRS-licensed area,⁹ which must be shown in sufficient detail on a map to determine whether a given consumer falls within the designated service area.¹⁰

P.U.C. SUBST. R. 26.418(b)(2) provides that “in the case of areas served by a rural telephone company, as defined in § 26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 C.F.R. § 54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.”

Any change in the Commission’s designation of service areas for ETCs may require a corresponding change in P.U.C. SUBST. R. 26.418(b). In addition, since designation for the Texas universal service fund (TUSF) is generally based on the same service areas as those for ETC, a change in the Commission’s designation of service areas for ETCs could require a corresponding change in the Texas PUC’s rule, P.U.C. SUBST. R. 26.417(b) (pertaining to eligible telecommunications provider (ETP) designation).

⁹ *Application of Dobson Cellular Systems, Inc. for Designation as a Federal Eligible Telecommunications Carrier and Petition to Redefine Certain Rural Service Areas*, Docket No. 28462, Order at 9 (Jan. 14, 2005) (*Dobson Non-Rural*).

¹⁰ *Id.* at 6.

Quality of Service Obligations

The Texas PUC has not required ETC applicants to comply with the state's service quality and consumer protection requirements to receive ETC designation. However, in the case of some joint ETC and ETP designations granted to wireless carriers in rural ILEC study areas, such compliance has been required.¹¹ In the *Western Wireless* proceeding, for example, the Texas PUC ruled that the provider must "provide continuous and adequate service in compliance with the quality of service standards defined and codified in P.U.C. SUBST. R. 26.52-26.54, as required by P.U.C. SUBST. R. 26.417(c)(1)(D), to the extent the terms of those rules are applicable to the wireless provider."¹²

In Texas, in granting ETP designation for providers to receive TUSF support, P.U.C. SUBST. R. 26.417(c)(1)(D) requires that the telecommunications provider "renders continuous and adequate service within the area or areas, for which the commission has designated it an ETP, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks)." In Texas, certain reporting requirements of these rules are waived for ETPs who do not have direct access to the data with which to make all of the reports. The Texas PUC believes that these rules form an appropriate baseline for service quality for ETPs in Texas.

¹¹ *Application of Dialtone Services, L.P. to Amend Designation as an Eligible Telecommunications carrier and an Eligible Telecommunications Provider to Include Study Areas served by Certain Rural Telephone Companies*, Docket No. 32024, Order (Jun. 22, 2006) and *Application of WWC Texas RSA Limited Partnership for Designation as a Federal Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418*, PUC. Docket No. 22289 and SOAH Docket No. 473-00-1167, and *Application of WWC Texas RSA Limited Partnership for Designation as a Federal Eligible Telecommunications Provider Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.417*, Docket No. 22295 and SOAH Docket No. 473-00-1168, Order (Oct. 30, 2000) (*Western Wireless*).

¹² *Western Wireless* at 15.

Multiple Support Winners

Texas PUC policy, as reflected in its rules, is to encourage competition by allowing multiple ETCs in a service area. This multiple ETC approach is limited by a requirement, for both ETC and ETP designation, that designation in a small or rural ILEC study area must be in the public interest.¹³ On the other hand, the Texas PUC has found designation of additional ETCs and ETPs in non-rural service areas, *per se*, to be in the public interest.¹⁴

Treatment of the Incumbent LEC

Paragraph 13 of the *Request for Comment* lists many questions regarding the treatment of an ILEC should auctions be employed to determine universal service fund distributions. The 79th Texas Legislature, 2nd Special Session, passed legislation in 2005 that included a provision that was codified into the Texas Public Utility Regulatory Act (PURA).¹⁵ PURA § 54.251 states that "A certificate holder may meet the holder's provider of last resort obligations using any available technology. Notwithstanding any provision of Chapter 56, the commission may adjust disbursements from the universal service fund to companies using technologies other than traditional wireline or landline technologies to meet provider of last resort obligations."¹⁶

Conclusion

In closing, the Texas PUC appreciates the opportunity to provide initial comments to the Joint Board in this proceeding. The Texas PUC believes that it

¹³ P.U.C. SUBST. R. 26.418(e)(2) and P.U.C. SUBST. R. 26.417(d)(2).

¹⁴ See Open Meeting Tr. at 75-80 (Apr. 29, 2004) for the Commission's *per se* public-interest finding in *Dobson Non-Rural*. See also *Application of NPCR, Inc. d/b/a Nextel Partners for Eligible Telecommunications Carrier Designation*, Docket No. 27709, Order at 8 (July 30, 2004) (*Nextel*), and Open Meeting Tr. at 15, 19-20, 33 (May 13, 2004) for the Commission's *per se* public-interest discussion in *Nextel* and *Dobson Non-Rural*.

¹⁵ Act of Aug. 16, 2005, 79th Leg., 2nd C.S., S.B. 5, § 7 (codified as TEX. UTIL. CODE ANN. § 54.251 (Vernon 1998 & Supp. 2005)).

¹⁶ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 54.251 (Vernon 1998 & Supp. 2005).

October 10, 2006

is important to highlight the current activities taking place at the state level, and to urge the Joint Board to consider the important role that states perform in determining the eligibility of, and granting designation to, carriers to receive federal high cost universal service funding.

October 10, 2006

Respectfully submitted,

Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78711-3326

October 10, 2006

/s/

Paul Hudson
Chairman

/s/

Julie Parsley
Commissioner

/s/

Barry T. Smitherman
Commissioner